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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on May 19, 2007

\+ CRL.REV.P. 925/2006, CRL.REV.P. 926/2006

R.D.GUPTA & ANR ..... Petitioners
Through Mr. D.S. Kohli, Advocate

versus

STATE THRU C.B.I. ..... Respondent
Through Mr. R.M. Tiwari for CBI

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioners are aggrieved by the order of the Special Judge framing charges dated 29th May, 2006. They were arrayed as accused 5 and 6 (hereafter they shall be referred to as A-5 and A-6).

2. Briefly the case of the Central Bureau of Investigation (hereafter "CBI"), was that the M/s Kanika Chemicals India through Ashok Kumar Singhal and Neeraj Kumar (referred to as A-1 and A-2 by the Court and referred to as such in these proceedings) conspired with Deepak Kumar (A-3) and Raj Kumari (A-4),

other accused and obtained cash credit facilities to the tune of Rs. 36.36 lakhs, after depositing false and forged property deeds, owned by Swaran Lata as a collateral security. It was alleged that this amount was not repaid to the Bank.

3. It was alleged that the petitioners were Directors of M/s Shri Ram Polychem Pvt. Ltd. and that the concern of the accused Ashok Kumar Singhal and Neeraj Kumar (M/s Kanika Chemicals India) had sought for utilization of the limits sanctioned by the bank on the basis of invoices/bills issued by M/s Shri Ram Polichem Pvt. Ltd. The allegation was that such supplies were never actually made.

4. In support of the allegations against the present petitioners, the CBI had relied upon the extract of Stock Register of M/s Shri Ram Polichem Pvt. Ltd., viz. D-94 and also placed heavy reliance on the statement of PW-18, one Balvinder Singh. M/s Kanika Chemicals India had utilized funds to the tune of over Rs. 19,18,000/- and presented documents/invoices issued by M/s Shri Ram Polychem Pvt. Ltd. During the course of investigation, the CBI contended that M/s Shri Ram Polychem Pvt. Ltd. in fact did not have the concerned stock and the entry pertaining to one IP Enterprises shown in its books were bogus and no such firm existed. The relevant discussion on the case is to be found in the following extract of the impugned order:

> "*A-1 was the public servant who had accepted the collateral security in the nature of immovable property, i.e. 184, Saini Enclave, Vikas Marg, New Delhi which was a forged document; he had granted cash credit facility to A-2 and A-3 on the basis of this forged collateral security without due verification. A-4 Deepak Kumar had prepared the forged documents of this property and A-5 Raj Kumari had impersonated as Swaran Lata alleged to be the*

owner of this property whereas this property actually belonged to one Amit Modi. The specimen handwritting of A-4 Deepak Kumar and A-5 Raj Kumari when compared with the questioned documents had opined positive by the GEQD in favour of the prosecution on this count. The legal Search Report D-70 submitted by A-6 Hukum Chang Garg categorically states that the property is in the name of Swaran Lata, whereas the perpetual lease deed shows that this is a free hold property in the name of Sh. Amit Modi, D-71 which is the letter of the Deputy Director, DDA clearly states that this property 184, Saini Enclave, Vikas Marg, New Delhi is in the name of Amit Modi; this is further corroborated by documents D-72. Accused Hukum Chand Garg had clearly given a wrong report intentionally.

D-94 is the Stock Register of M/s Shri Ram Polychem showing the transactions with M/s Kanika Chemicals and M/s IP Enterprises. In this context, statement of PW-18 Balvinder Singh is relevant. He has in his statement recorded under Section 161 of the CR.P.C. stated that property No. E-304, J.J. Colony, Khayala has been transferred in his name and he does not know any person by the name of Rakesh Kumar and this firm has never existed at E-304, JJ Colony, Khayala where he has been working since the last 6-7 years. This version of PW-18 substantiates the submission of the prosecution that firm M/s IP Enterprises was in fact a non-existent firm and the stock register D-94 showing the transaction of M/s Shri Ram Polychem with M/s IP Enterprises was in fact a sham transaction. D-79 is an account opening form of M/s IP Enterprises showing the address as E-304, JJ Colony, Khayala and the photograph of Rakesh Kumar has also been affixed which PW-18 had refused to recognise and has stated that there is no such office at this address which property is in fact in his name. D-94 the Stock Register in fact shows no stock of M/s Shri Ram Polychem which had been supplied to M/s IP Enterprises. D-82, D-83, D-84, D-85, D-86, D-87 and D-88 are various cheques issued by M/s Shri Ram Polychem signed by both A-7 Ram Das Gupta and A-8 Manish Gupta in their capacity as Directors of M/s Shri Ram Polychem Pvt. Ltd. in favour of M/s IP Enterprises which prima facie appears to be a non-existent firm. D-118 is also relevant.

Prima facie there is sufficient material on record to frame charge against the accused persons."

5. After the above observations, the learned Special Judge further stated that charges for offences under Sections 120B read with Sections 419, 467, 468,471

IPC and 13(1) (d) read with Section 13(2), Prevention of Corruption Act had to be framed against all the accused.

6. Apparently, on the next date of hearing, namely, 29th May, 2006, the learned Judge proceeded to read out the charges in the following form:

> *"CHARGE*
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> *I, Indermeet Kaur Kochhar, Special Judge, CBI, New Dehli, do hereby charge you accused (1) Ashok Kumar Singhal (2) Neeraj Kumar (3)Deepak Kumar (4) Raj Kumari (5) Ram Das Gupta and (6) Manish Gupta as under:*
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> *That during the year 2001 at New Delhi you cheated Canara Bank, Mayapuri Branch by dishonestly inducing the bank to deliver the ILC and OCC facilities to the tune of Rs. 36.36 lakhs on the basis of forged/fake property paper and thereby caused a wrongful loss to the tune of Rs. 36.36 lakhs and corresponding gain to themselves and thereby committed an offence punishable u/s 420 IPC and within my cognizance.*
>
> *That during the aforesaid period and places you have forged the sale deed in respect of property No. 184, Saini Enclave, Vikas Marg, New Delhi and the NOC purportedly issued by DDA to obtain the ILC and OCC facilities from Canara Bank, Mayapuri Branch and thereby committed an offence punishable u/s 467 IPC and within my cognizance.*
>
> *That during the aforesaid period and place you forged the sale deed in respect of property No. 184, Saini Enclave and NOC purportedly issued by DDA intending that it shall be used for the purpose of cheating and that you thereby committed an offence punishable u/s 468 IPC and is within my cognizance.*
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> *That during the aforesaid period and place you dishonestly/intentionally used as genuine the sale deed in respect of property No. 184, Saini Enclave and NOC purportedly issued by DDA which you knew or had reason to believe to be a forged document and that you thereby committed an offence punishable u/s 471 IPC and is within my cognizance.*
>
> *And I hereby direct that you be tried by this Court for the aforesaid charges.*
>
> *Sd/-*
> *Special Judge/CBI/ND*
> *29.05.06*
>
> *The contents of charge has been read over and explained to the accused persons in Hindi who are questioned as under:*

Q. Do you plead guilty?
Ans. I plead not guilty and claim trial.
Ans. I plead not guilty and claim trial.
Ans. I plead not guilty and claim trial.
Ans. I plead not guilty and claim trial.
Ans. I plead not guilty and claim trial.
Ans. I plead not guilty and claim trial.

RO & AC

Sd/-
Special Judge/ CBI/ ND/ 29.05.06"

7. On that date, the Court observed the charges were framed against all accused present and signed by all except the two accused including the first petitioner. He was not present; the matter was kept on 3rd July, 2006 for his presence and acceptance/denial on charge. He signed the charges on 3rd July, 2006.

8. Learned counsel contended that impugned order dated 29.05.06 as well as the charges as framed betray non-application of mind. Counsel contended that there is absolutely no discussion on the merits so far as the allegations levelled against the petitioners are concerned. It was urged that the CBI had made out the case on two specific parts, one about the fraudulent use of forged documents for the purpose of securing enhancement of credit limit in which the petitioners had no role even according to the charge-sheet. Under these circumstances, the charges as framed and read out were un-sustainable and would inevitably lead to in-curable prejudice. Counsel also contended that even otherwise, the discussion on the merits of the charges, as far as the petitioners are concerned disclose non-application of mind.

9. Learned counsel contended that the main ground on which the Court

appears to have been persuaded to charge the present petitioners was their seeming inability to explain the absence of proprietor of IP Enterprises from the premises. Counsel contended that the impugned order would show that the trial Court relied upon heavily on the depositions of PW-18 who had stated that after having purchased the premises at E-304, JJ Colony, Khyala Nagar in September, 1999, he was unable to state as to the whereabouts or identity of Rakesh Kumar, the proprietor of IP Enterprises. Counsel relied upon the exhibits which are part of the records such as account opening form, statement of account of the said IP Enterprises as well as the ration card of Rakesh Kumar, all of which were part of the bank's record (and which are also part of the official record of the trial Court) to say that these demonstrated that the said concern was actually in business for a considerable period right upto 2003 i. e. well beyond the period of scrutiny. Learned counsel also took me through the copies of those documents and pointed out specific entries where reputed concerns such as Reliance Industries and DCM were said to have been transacting with IP Enterprises.

10. It was contended that in order to frame a charge, against an accused for any offence, the court has to be not only reasonably satisfied about existence of the suspicion regarding the crime, but also existence of ingredients that make up the concerned offence. Learned counsel contended that even at the stage of framing of charges, the Court has to carefully sift the evidence to satisfy itself about this basic element. It was submitted that the mere suspicion raised on account of absence of Rakesh Kumar or the correct address of I.P. Enterprises *ipso facto* did not lead to inference that M/s Shri Ram Polychem Pvt. Ltd.,

concern of which the petitioners were Director, did not enter into a genuine transaction and did not supply the goods to M/s Kanika Chemicals India. It was further contended that in order to charge the petitioners, the element of gain or benefit to M/s Kanika Chemicals India had to be shown, on the basis of available materials. Such evidence or materials, it was contended, were singularly lacking.

11. Learned counsel for the CBI, Mr. R.M. Tiwari opposed the petition and stated that the materials on record justified framing of charges stating that the entries in D-94 on being cross-verified through materials such as the depositions of PW-12, PW-14 and PWS-18 were sufficient to warrant a grave suspicion about conspiracy by the petitioners with M/s Kanika Chemicals India and other accused for defrauding and causing unlawful loss to the bank. It was contended that at the stage of framing of charges, although the Court has to sift the materials, it is not expected to meticulously consider the same and the Court has to confine itself to the materials available. Reliance was placed upon the judgment of the Supreme Court in *State of Orissa -v- Devender Nath Padi* 2005 (1) SCC 568.

12. I have considered the submissions of the parties and also seen copies of the material documents such as D-94, D-97 as well as copies of depositions of PW-12, PW-14 and PW-18 and the statement of account of IP Enterprises i.e. D-103. I have carefully considered these and given my anxious consideration. I am of the considered opinion that the trial Court has not applied its mind to all the facts. Although there is a brief discussion about the impact of D-94, the operative part of the order as well as the charge as read out on 29th May, 2006 show non-application of mind. The Court appears to have overlooked that the CBI itself did

not level any allegation against the present petitioner concerning the first part of the fraudulent transaction for which allegations were specifically levelled against other accused. The role of the present petitioners, if at all indicated was in respect of the utilisation of funds of M/s Kanika Chemicals India on the basis of bills or invoices evidencing alleged fictitious transactions unsupported by evidence about the existence of proprietor of IP Enterprises. The Court, however, proceeded to roll-up the charges on the basis of allegations relating to the other accused together with the petitioners. This course of action would certainly cause prejudice as the Court would be unable, in the trial, to focus its attention to the specificity of the allegations against the petitioners. There is a dichotomy between the substantive order on charge and the charge, for the accused to answer the charges has to know specific offences which has to answer, as read to him, or levelled against him.

13. In view of the above, I am of the opinion that the impugned order as well as the subsequent/consequential order dated 29th May, 2006 has to be interfered with. They are accordingly set aside so far as the petitioners are concerned. The matter is remitted back for reconsideration. The matter shall be heard afresh and appropriate orders shall made after giving due opportunity to the concerned parties in accordance with law.

14. The petition is allowed in the above terms.

Order dasti to parties.

S.RAVINDRA BHAT, J

MAY 19, 2007
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